

BEFORE LINDA McCULLOCH, SUPERINTENDENT OF PUBLIC INSTRUCTION
STATE OF MONTANA

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BOARD OF TRUSTEES, RONAN SCHOOL)	OSPI No. 296-03
DISTRICT NO. 30,)	
)	
Appellant,)	
)	
vs.)	DECISION AND ORDER
)	
FRANCINE DUPUIS,)	
)	
Respondent.)	

* * * * *

Having reviewed the record and considered the parties' briefs and oral arguments, the Superintendent of Public Instruction issues the following Decision and Order.

DECISION AND ORDER

The September 15, 2003 decision by the Lake County Superintendent of Schools accepting jurisdiction in this matter and denying Appellant's Motion to Dismiss is hereby REVERSED. Appellant's Motion to Dismiss is GRANTED and Respondent's appeal is dismissed for lack of jurisdiction.

The State Superintendent's decision in this case is strictly on the jurisdictional issue before her. It should not be interpreted as reflecting, one way or the other, her views as to whether the use of the terms "Chiefs" and "Maidens" may be disparaging to American Indians. The conclusions in this Decision and Order are in the context of an agency review of a jurisdictional question, not a decision on the merits of the mascot issue.

PROCEDURAL HISTORY

This is an appeal by the Board of Trustees, Lake County School District No. 30, Ronan (hereinafter “District”) of the Second Jurisdiction Order dated September 15, 2003 issued by the Lake County Superintendent of Schools.

On May 5, 2003, after considering public comments including a written request by the Indian Education Committee (IEC), the District voted to “put the words ‘Chiefs’ and ‘Maidens’ on the Ronan Middle School floor along with the design that is chosen.” Francine Dupuis (hereinafter “Ms. Dupuis”) filed a Notice of Appeal with the Lake County Superintendent of Schools on June 3, 2003.

The District moved to dismiss the appeal based on jurisdictional grounds. The matter was briefed by the parties. On August 5, 2003 Ms. Dupuis filed an Amended Notice of Appeal. The Lake County Superintendent of Schools issued a Limited Jurisdiction Order on August 13, 2003 denying jurisdiction as to: Part 1 of the appeal dealing with discrimination; Part 2 of the appeal stating that there was no constitutional, statutory or contractual right to mandate a decision of the board and that disagreement with a decision does not constitute a contested case for purposes of jurisdiction; and Part 3 of the appeal requesting a stay of any action by the Board. Following briefing of the issues raised in the Amended Notice of Appeal and on September 15, 2003 the Lake County Superintendent of Schools issued a Second Jurisdiction Order accepting jurisdiction on the issue of whether the action of the District in placing names and logos on the gym floor offends the individual dignity of the IEC, its members and the Confederated Salish and Kootenai Tribes and violates the Montana Constitution, Article X, Section I and Article II, Section 4 as well as 20-1-501, MCA and District Policies Nos. 2450 and 4150. The District filed a Notice of Appeal with the State Superintendent on September 23, 2003.

The Lake County Superintendent of Schools' Second Jurisdiction Order dated September 15, 2003 is the subject of this appeal.

ISSUE ON APPEAL

The issue on appeal is: Does the Lake County Superintendent of Schools have jurisdiction to hear Ms. Dupuis' appeal of the District's decision to put the words "Chiefs" and "Maidens" on the middle school gymnasium floor when Ms. Dupuis asserts that such decision offends her individual dignity and therefore violates the Montana Constitution, Article X, Section 1(2), and Article II, Section 4 as well as 20-1-501, MCA and Ronan School District Policies Nos. 2450 and 4150?

STANDARD OF REVIEW

The State Superintendent's review of a county superintendent's decision is based on the standard of review of administrative decisions established by the Montana Legislature in Mont. Code Ann. §2-4-704 and adopted by the State Superintendent in Admin. R. Mont. 10.6.125. Findings of fact are reviewed under a clearly erroneous standard and conclusions of law are reviewed to determine if the correct standard of law was applied. *Harris v. Trustees, Cascade County School Districts No. 6 and F, and Nancy Keenan*, 241 Mont. 274, 277, 786 P.2d 1164, 1166 (1990) and *Steer, Inc. v. Dept. of Revenue*, 245 Mont. 470, at 474, 803 P.2d 601, 603 (1990).

The State Superintendent may reverse or modify the county superintendent's decision if substantial rights of the Appellant have been prejudiced because the findings

of fact, conclusions of law and order are (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority; (c) made upon unlawful procedure; (d) affected by other error of law; (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or (g) affected because findings of fact upon issues essential to the decision were not made although requested. Admin. R. Mont. 10.6.125(4).

FINDINGS OF FACT

1. The District has used the names “Chiefs” and “Maidens” as their mascots for several years.

2. The Ronan School District established the IEC to obtain input from Indian parents on cultural issues relating to Indian students.

3. On May 5, 2003 the Board of Trustees for the District held a public hearing on the issue of whether or not to put the names “Chiefs” and “Maidens” along with a design on the floor of the Ronan Middle School gymnasium.

4. At the hearing the trustees heard the testimony from many individuals including Ms. Dupuis on behalf of the IEC.

5. At the close of the hearing the trustees voted to place the names “Chiefs” and “Maidens” and design to be chosen on the Ronan Middle School gymnasium floor.

6. Ms. Dupuis appealed the Board’s decision to the Lake County Superintendent of Schools on June 3, 2003.

CONCLUSIONS OF LAW

Does the Lake County Superintendent of Schools have jurisdiction to hear Ms. Dupuis' appeal of the District's decision to put the words "Chiefs" and "Maidens" on the middle school gymnasium floor when Ms. Dupuis asserts that such decision offends her individual dignity and therefore violates the Montana Constitution, Article X, Section 1(2), and Article II, Section 4 as well as 20-1-501, MCA and Ronan School District Policies Nos. 2450 and 4150?

Montana administrative rule defines "contested case" as "any proceeding in which a determination of legal rights, duties or privileges of a party is required by law to be made after an opportunity for hearing." ARM 10.6.102 The State Superintendent held in *Schultz v. Arlee School District #8-J*, OSPI 256-95 that "for a County Superintendent to have jurisdiction to hold a hearing a petitioner must have a constitutional, statutory or case law grant of a hearing right."

I. District Policies

District policy 2450 relates to the District's educational goals, their commitment to working with local Tribes when implementing educational goals, inclusion of cultural heritage of American Indians and providing training to school personnel to gain understanding and awareness of American Indian culture. Policy 4150 provides for: (1) equal access for American Indian children to all programs, services and activities offered by the district, (2) consultation with the Confederated Salish and Kootenai Tribes, parents of Indian children and the IEC, (3) the involvement of parents and the Tribe in planning

and developing programs and activities, (4) dissemination of relevant applications, evaluations and program plans to parents and the Tribe, and (5) an opportunity for parents and the Tribe to present their views to the District regarding the district's educational program.

During oral argument, Ms. Dupuis' counsel made the assertion that "for a public school district operating within a recognized Indian reservation, the legal requirement for the district to consult and cooperate with the Tribal government means the district must defer to the Tribe on cultural matters that affect their right to dignity." This statement is not supported by the Constitution or statutory law. The Constitution specifically provides in Article X, that the "supervision and control of schools in each school district shall be vested in a board of trustees...". There is no exception for school districts operating within a recognized Indian Reservation.

The Lake County Superintendent of Schools determined, in her August 14, 2003 Jurisdiction Order, that the District had complied with the requirements of District policy and that a disagreement with a board decision in this regard did not constitute a contested case for purposes of jurisdiction. This determination was not appealed by Ms. Dupuis. These policies of the District do not provide a basis for a "contested case" hearing before the county superintendent.

II. Montana statute

Ms. Dupuis alleges that the District's decision to put the words "Chiefs" and

“Maidens” on the middle school gymnasium floor violates Ms. Dupuis’ individual dignity and is therefore a violation of 20-1-501, MCA.

This section of Montana law states the legislature’s intent in connection with the provisions of Article X, Section 1(2) of the Montana Constitution. The legislature’s intent is that “every Montanan, whether Indian or non-Indian, be encouraged to learn about the distinct and unique heritage of American Indians in a culturally responsive manner” and further that educational agencies work with tribes that are in close proximity in implementing educational goals.

This section does not provide that the educational agencies must defer to the wishes of the Tribe, nor does it provide for a right to a hearing before a county superintendent if a person or entity believes that a school district has violated this provision of Montana law. This section does not provide a basis for a “contested case” hearing before the county superintendent.

III. Montana Constitution Article X, Section 1(2)

Ms. Dupuis alleges that the District’s decision to put the words “Chiefs” and “Maidens” on the middle school gymnasium floor violates Ms. Dupuis’ individual dignity and is a violation of Article X, Section 1(2). This section of the Constitution provides:

Article X, Section 1. Educational goals and duties. ***

(2) The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.

This section of the Constitution has not been interpreted by the Montana Supreme Court nor does it provide for a right to a hearing. Therefore, this section of the Constitution does not provide a basis for a “contested case” hearing before the county superintendent.

IV. Montana Constitution, Article II, Section 4

Ms. Dupuis alleges that she has a constitutional right to a hearing based on Article II, Section 4 and Article X, Section 1(2).

Article II, Section 4 provides:

Article II, Section 4. Individual dignity. The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.

Both parties agree that the portion of this section that applies in this instance is the first sentence dealing with the dignity of human beings. In the cases cited by the District, the right to individual dignity is interpreted with other fundamental constitutional rights. Ms. Dupuis does not cite, nor can the State Superintendent find, any cases where the individual dignity clause was interpreted independently. It may well be that the Montana Supreme Court will determine that individual dignity is a stand alone right, however, this is for the Supreme Court to determine not a county superintendent nor the State Superintendent.

The Montana Supreme Court stated in *Walker* that constitutional issues involving broad public concerns are reserved to the Supreme Court.

“This Court ‘reserves to itself the power to examine constitutional issues that involve the broad public concerns to avoid future litigation on a point of law.’” *Walker v. State*, 316 Mont. 103, 68 P.3d 872

Finally, county superintendents do not have jurisdiction to rule on issues outside of Title 20, Montana Code Annotated.

“County superintendents also do not have the jurisdiction to rule on all matters of law that somehow may be related to schools. County superintendents have the power to conduct administrative hearings to issue findings of fact and conclusions of law in areas that are within their field of expertise under Title 20. They do not have the jurisdiction to rule on questions of law outside of Title 20. For example, they cannot hear tort claims and they do not hear actions arising out of the Montana Human Rights Act.” *Brott v. School District No. 9, Browning Public Schools*, OSPI No. 234-94.

Therefore, the State Superintendent finds that there is no basis in constitutional, statutory or case law for Ms. Dupuis to appeal this matter to the county superintendent.

DECISION AND ORDER

The State Superintendent reverses the decision of the Lake County Superintendent of Schools. The District’s Motion to Dismiss is granted and Ms. Dupuis’ appeal is dismissed for lack of jurisdiction.

The State Superintendent takes this opportunity to reiterate that this is her decision on the jurisdiction question only and should not be interpreted as reflecting, one way or the other, her views as to whether the use of the terms “Chiefs” and “Maidens” may be disparaging to American Indians. This is not a decision on the merits of the mascot issue.

DATED this 19th day of July, 2004.

/s/ Linda McCulloch
Linda McCulloch,
Superintendent of Public Instruction

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 19th day of July, 2004, a true and exact copy of the foregoing DECISION AND ORDER was mailed, postage prepaid, to the following:

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